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SISTEM LINGKARAN LEBUHRAYA KAJANG SDN BHD v. ORCHARD CIRCLE SDN BHD & ANOR

FEDERAL COURT, PUTRAJAYA
HASNAH MOHAMMED HASHIM CJ (MALAYA)
RHODZARIAH BUJANG FCJ
B NORDIN HASSAN FCJ
[CIVIL APPEAL NO: 01(F)-3-02-2024(B)]
12 MARCH 2025

C **Abstract** – *(i) While s. 49(1) of the Land Acquisition Act 1960 generally bars appeals solely on the quantum of compensation, an appeal is permissible if it involves a question of law concerning compensation; (ii) The validity of the surrender of land under the National Land Code, specifically ss. 196 to 201, is a question of law as it requires the interpretation and application of these statutory provisions to the specific facts of the case.*

D

LAND LAW: *Acquisition – Surrender of land – Compensation – Court of Appeal set aside decision of High Court which maintained compensation awarded by Land Administrator – Case remitted to High Court for hearing of assessment of land – Application of proviso of s. 49(1) of Land Acquisition Act 1960 – What amounts to question of law – Whether there was question of law – Whether there was valid surrender of land to State Authority – National Land Code, ss. 196, 197, 198, 199, 200 & 201*

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F In 2011, a second land inquiry was held concerning Orchard Circle Sdn Bhd ('OCSB') acquired land by the State Authority, pursuant to the decision of the High Court in a judicial review application by OCSB. In the land inquiry, two main issues were adjudicated by the Land Administrator, namely, the issues of the surrender of land by OCSB and compensation. The issue of surrender of the land was related to OCSB's 17,284.67 sq meters of land
G which were said to have been surrendered by the State Authority and was awarded nominal compensation of RM10 for the surrendered portion. The Land Administrator decided that there was a surrender of the said land by OCSB to the State Authority. The High Court was of the view s. 200 of the National Land Code ('NLC') had been complied with, in coming to a finding
H that the surrender of lands by OCSB was effective and maintained the nominal award granted by the Land Administrator for the surrendered land. Upon appeal, the Court of Appeal decided that there were questions of facts and law. The Court of Appeal: (i) set aside the decision of the High Court which, *inter alia*, maintained the compensation awarded by the Land
I Administrator for the alleged surrendered land in the nominal sum of RM10; and (ii) ordered that the case be remitted to the High Court for a hearing of the assessment of the land. Hence, the present appeal. The issues that arose

for adjudication concerned: (i) the application of the proviso of s. 49(1) of the Land Acquisition Act 1960 ('LAA'); (ii) what amounts to a question of law; (iii) was there a question of law in the present case; and (iv) whether there was a valid surrender of the land by OCSB to the State Authority.

Held (dismissing appeal)
Per Nordin Hassan FCJ delivering the judgment of the court:

(1) Based on s. 49(1) of the LAA, there shall be no appeal on a decision that comprises the award of compensation. However, if there is a question of law concerning compensation, the door is still open for further appeal to the Court of Appeal and the Federal Court. (para 4)

(2) A question of law essentially involves the interpretation of the law and the application of the law to the facts of the case. There is a plethora of cases that discussed the meaning of the question of law and, among others, the Federal Court case of *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* ('*Amithabha Guha*'). The Federal Court, in *Pentadbir Tanah Daerah Johor v. Nusantara Daya Sdn Bhd* ('*Nusantara Daya*'), had accepted the proposition set down in *Amitabha Guha* with a rider that it should not be given a liberal reading that negated the clear intent of s. 49(1) of the LAA and amounted to an appeal on compensation. (paras 7 & 8)

(3) The issue of the surrender of the land by OCSB was pertinent to be determined by the court and it was a question of law as the validity of the surrender of land has been laid down in the NLC, particularly from ss. 196 to 201. Here, it involved the interpretation and application of the said provisions to the facts of the present case as were done by the Land Administrator, the High Court and the Court of Appeal in coming to their decisions. The guidelines for determining the question of law, in *Amitabha Guha*, had been satisfied in the present case and even the narrow interpretation of the question of law in *Nusantara Daya* had been complied with. The present appeal, in pith and substance, was not an appeal against the inadequacy of compensation. There was a question of law and, as such, the appeal of OCSB to the Court of Appeal and this court was not barred by the proviso of s. 49(1) of the LAA. (paras 24-26)

(4) OCSB, as the registered proprietor of the land, and Arab Malaysian Merchant Bank ('AMMB'), as the chargee of the land, had legal interest over the land. Therefore, under s. 196(1)(a) read with s. 196(2)(a) of the NLC, their consent in writing needed to be obtained before the surrender of the land be approved by the State Director. As there was no such consent, s. 196(1) had not been complied with. Further, s. 200(1)(c) of the NLC required the application for the surrender of land through Form 12B to be accompanied, *inter alia*, by a written consent as envisaged under s. 196(1)(c). The High Court, in arriving at its

A decision that there was an effective surrender of the land, failed to address the pertinent issue of no written consent by OCSB and AMMB. The Land Administrator also failed to comply with the procedure of s. 201(4) of the NLC upon approval of the surrender of the land, which was that the Land Administrator was required to revise the rent payable B by the proprietor, notify the proprietor of the approval and make a memorial of the surrender on the register and the documents of title. These were not done. (paras 32 & 36-39)

(5) As there was no valid surrender of the land to the State Authority, the compensation for the land needed to be assessed and, as such, the order C of the Court of Appeal to remit the case to the High Court for the assessment of the land was most appropriate. (para 42)

Hasnah Mohammed Hashim FCJ (dissenting):

(1) The complaints of OCSB essentially concerned issues of fact and/or D application of valuation principles when computing the amount of compensation to be awarded for the acquisition. Such issues of fact, as well, were not pure questions of law but issues which related solely and ultimately to compensation, that was, the amount of inadequacy of the nominal compensation awarded. Where a decision affected E compensation, *albeit* based on a question of law, such a decision was non-appealable. (para 89)

(2) There was no error by the High Court in concluding, even without OCSB giving the original title for endorsement to be made, the surrender of the surrendered area was effective and valid. OCSB had effectively F surrendered the surrendered area in accordance with the provisions of the law. There could be no loss suffered by OCSB as that land had been surrendered and no longer belonged to or was in the possession of OCSB. (para 105)

(3) The fact that OCSB had effectively surrendered the surrendered area, in G accordance with the provisions of the NLC, was a relevant consideration in the determination of adequate compensation. The surrendered area could not be assessed based on market value as the land was no longer in the possession of OCSB. Thus, the nominal value could be ascribed in the determination of compensation relating to the H surrendered area. (para 113)

(4) There was a serious misdirection by the Court of Appeal remitting the matter back to the High Court for an assessment of the value of the surrendered area on the basis that it had not been properly surrendered. At all material times before the High Court, OCSB was not denied the I right to present its case on the basis that the surrendered area had yet to be surrendered. The appeal was allowed; the decision of the Court of Appeal was set aside and the decision of the High Court was affirmed. (paras 130 & 132)

Bahasa Melayu *Headnotes*

Pada 2011, satu inkuiri kedua tanah telah dijalankan berkaitan tanah Orchard Circle Sdn Bhd ('OCSB') yang diambil oleh Pihak Berkuasa Negeri, susulan keputusan Mahkamah Tinggi dalam satu permohonan semakan kehakiman oleh OCSB. Dalam inkuiri tanah tersebut, dua isu utama diadjudikasi oleh Pentadbir Tanah, khususnya, isu penyerahan tanah oleh OCSB dan pampasan. Isu penyerahan tanah adalah bersabit tanah OCSB seluas 17,284.67 meter persegi yang dikatakan diserahkan oleh Pihak Berkuasa Negeri dan diawardkan pampasan nominal RM10 untuk bahagian yang diserahkan. Pentadbir Tanah memutuskan bahawa terdapat penyerahan tanah tersebut oleh OCSB pada Pihak Berkuasa Negeri. Mahkamah Tinggi berpendapat bahawa s. 200 Kanun Tanah Negara ('KTN') telah dipatuhi, dalam membuat dapatan bahawa penyerahan tanah oleh OCSB berkuat kuasa dan mengekalkan award nominal yang diberi oleh Pentadbir Tanah untuk tanah yang diserahkan. Ekoran rayuan, Mahkamah Rayuan memutuskan bahawa terdapat soalan fakta dan undang-undang. Mahkamah Rayuan: (i) mengetepikan keputusan Mahkamah Tinggi yang, antara lain, mengekalkan pampasan yang diawardkan oleh Pentadbir Tanah untuk tanah yang diserahkan dalam jumlah nominal RM10; dan (ii) memerintahkan agar kes tersebut dikembalikan ke Mahkamah Tinggi untuk pendengaran taksiran tanah. Maka timbul rayuan ini. Isu-isu yang timbul untuk diputuskan adalah: (i) pemakaian proviso s. 49(1) Akta Pengambilan Tanah 1960 ('APT'); (ii) apakah yang terjumlah sebagai soalan undang-undang; (iii) adakah terdapat soalan undang-undang dalam kes ini; dan (iv) sama ada terdapat penyerahan tanah yang sah oleh OCSB pada Pihak Berkuasa Negeri.

Diputuskan (menolak rayuan)
Oleh Nordin Hassan HMP menyampaikan penghakiman mahkamah:

(1) Berdasarkan s. 49(1) APT, tiada rayuan terhadap keputusan yang terdiri daripada award pampasan. Walau bagaimanapun, jika terdapat soalan undang-undang berkaitan pampasan, pintu masih terbuka buat rayuan lanjut di Mahkamah Rayuan dan Mahkamah Persekutuan.

(2) Soalan undang-undang, asasnya, melibatkan tafsiran undang-undang dan pemakaian undang-undang tersebut pada fakta kes. Terlalu banyak kes yang membincangkan maksud soalan undang-undang dan, antara lain, kes Mahkamah Persekutuan iaitu *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* ('*Amitabha Guha*'). Mahkamah Persekutuan, dalam *Pentadbir Tanah Daerah Johor v. Nusantara Daya Sdn Bhd* ('*Nusantara Daya*') telah menerima saranan yang digariskan dalam *Amitabha Guha* dengan proviso bahawa bacaan liberal tidak akan diberi hingga mensia-siakan niat jelas s. 49(1) APT dan terangkum sebagai rayuan terhadap pampasan.

(3) Isu penyerahan tanah oleh OCSB adalah relevan untuk diputuskan oleh mahkamah dan ini adalah soalan undang-undang kerana kesahan penyerahan tanah telah diperuntukkan dalam KTN, khususnya ss. 196 hingga 201. Kes ini melibatkan tafsiran dan pemakaian peruntukan-peruntukan tersebut pada fakta kes ini, seperti yang dilakukan oleh Pentadbir Tanah, Mahkamah Tinggi dan Mahkamah Rayuan dalam mencapai keputusan masing-masing. Panduan untuk memutuskan soalan undang-undang, dalam *Amitabha Guha*, telah dipenuhi dalam kes ini malah tafsiran sempit soalan undang-undang dalam *Nusantara Daya* telah dipenuhi. Inti sarinya, rayuan ini bukan rayuan terhadap kekurangan pampasan. Terdapat soalan undang-undang dan, oleh itu, rayuan OCSB ke Mahkamah Rayuan dan mahkamah ini tidak terhalang oleh proviso s. 49(1) APT.

(4) OCSB, sebagai pemilik berdaftar tanah, dan Arab Malaysian Merchant Bank ('AMMB'), sebagai pemegang gadaian tanah, mempunyai kepentingan undang-undang atas tanah. Oleh itu, bawah s. 196(1)(a) dibaca bersama-sama s. 196(2) KTN, kebenaran bertulis mereka perlu diperolehi sebelum penyerahan tanah diluluskan oleh Pengarah Negeri. Oleh kerana tiada kebenaran sedemikian, s. 196(1) tidak dipatuhi. Selanjutnya, s. 200(1)(c) KTN mensyaratkan permohon untuk penyerahan tanah melalui Borang 12B disertakan dengan, antara lain, kebenaran bertulis seperti yang dibayangkan oleh s. 196(1)(c). Mahkamah Tinggi, dalam mencapai keputusan bahawa tiada penyerahan efektif tanah, gagal menangani isu relevan iaitu ketiadaan kebenaran bertulis oleh OCSB dan AMMB. Pentadbir Tanah juga gagal mematuhi tatacara s. 201(4) KTN usai kelulusan penyerahan tanah tersebut, iaitu Pentadbir Tanah dikehendaki menyemak sewa yang perlu dibayar oleh pemilik, memaklumkan pemilik akan kelulusan dan membuat memorial penyerahan pada daftar dan dokumen hak milik. Semua ini tidak dilakukan.

(5) Oleh kerana tiada penyerahan sah tanah ke Pihak Berkuasa Negeri, pampasan tanah perlu ditaksir dan, ekoran itu, perintah Mahkamah Rayuan untuk mengembalikan kes ke Mahkamah Tinggi untuk taksiran tanah amat sesuai.

Hasnah Mohammed Hashim HMP (menentang):

(1) Aduan-aduan OCSB, asasnya, adalah berkaitan isu fakta dan/atau pemakaian prinsip-prinsip taksiran dalam mengira jumlah pampasan yang perlu diawardkan untuk pengambilan tanah. Isu-isu fakta sedemikian juga bukan soalan undang-undang tulen tetapi isu-isu yang sepenuhnya dan dasarnya berkaitan pampasan, iaitu jumlah kekurangan pampasan yang diawardkan. Apabila keputusan menjejaskan pampasan, walaupun berdasarkan soalan undang-undang, keputusan sedemikian tidak boleh dirayu.

(2) Tiada kekhilafan oleh Mahkamah Tinggi dalam memutuskan, walaupun tanpa OCSB memberi hak milik asal untuk membuat endorsmen, penyerahan kawasan yang diserahkan berkuat kuasa dan sah. OCSB, secara efektifnya, menyerahkan kawasan yang diserahkan selaras dengan peruntukan undang-undang. Tiada kerugian yang dialami oleh OCSB kerana tanah tersebut telah diserahkan dan tidak lagi dimiliki atau dalam milikan OCSB.

(3) Fakta bahawa OCSB, secara efektifnya, menyerahkan kawasan yang diserahkan, selaras dengan peruntukan KTN, adalah pertimbangan relevan dalam memutuskan kecukupan pampasan. Kawasan yang diserahkan tidak boleh ditaksir berdasarkan nilai pasaran kerana tanah tersebut tidak lagi dalam milikan OCSB. Oleh itu, nilai nominal dapat dianggap dalam memutuskan pampasan berkaitan kawasan yang diserahkan.

(4) Terdapat satu salah arah serius oleh Mahkamah Rayuan dalam mengembalikan hal perkara tersebut pada Mahkamah Tinggi untuk taksiran nilai kawasan yang diserahkan atas asas bahawa ini tidak diserahkan dengan teratur. Pada setiap masa material di Mahkamah Tinggi, OCSB tidak dinafikan hak untuk membentangkan kesnya atas dasar kawasan yang diserahkan belum lagi diserahkan. Rayuan dibenarkan; keputusan Mahkamah Rayuan diketepikan dan keputusan Mahkamah Tinggi disahkan.

Case(s) referred to:

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC ***(refd)***

Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors [2022] 2 CLJ 1 FC ***(dist)***

Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors [2021] 1 CLJ 1 FC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(refd)***

Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356 SC ***(refd)***

Pentadbir Tanah Daerah Johor v. Nusantara Daya Sdn Bhd [2021] 7 CLJ 1 FC ***(foll)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(foll)***

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Orchard Circle Sdn Bhd & Ors And Other Appeals [2018] 1 CLJ 239 CA ***(refd)***

Tan Yen Foon v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2008] 7 CLJ 267 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 68(1)(d)

Land Acquisition Act 1960, ss. 3, 7, 8(1), (4), 9, 12, 14(1), 16(1), 22, 36, 37(2), 38(1), 40D, 49(1)

National Land Code, ss. 196(1)(c), (2)(a), 197, 198, 199, 200(1)(b), (c), (d), (3), (4), 201(2), (4)(a), (b), (c), 244(2), 281(4), 131, First Schedule s. 1

A *For the appellant - Thangaraj Balasundram, Karen Lee Foong Voon, Cheah Kha Mun & Ho Zhi Yee; M/s Wong Kian Kheong*

For the 1st respondent - Sri Dev Nair, Mohd Hafiz Mahmund & Ashok Kumar Puri; M/s Sri Dev & Naila

For the 2nd respondent - Etty Eliany Tesno & Nor Fariza Ridzuan; Selangor State Legal Advisor

B *[Editor's note: For the Court of Appeal judgment, please see Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Anor [2024] 5 CLJ 647 (affirmed); Appeal from High Court, Shah Alam; Land Reference Nos: 15-99-09-2012 & 15-100-09-2012 (overruled).]*

C *Reported by Najib Tamby*

JUDGMENT

Nordin Hassan FCJ (Majority Decision):

[1] This is an appeal by SILK against the decision of the Court of Appeal
D on 25 August 2023 that set aside the decision of the High Court which among others, maintained the compensation awarded by the Land Administrator for the alleged surrendered land (impugned land) in the nominal sum of RM10. The Court of Appeal further ordered that the case be remitted to the Shah Alam High Court before the same judge for a hearing of the assessment of
E the impugned land.

The Main Issues

[2] The main issues in the present appeal are as follows:

(i) the application of the proviso of s. 49(1) of the Land Acquisition Act
F 1960 (LAA 1960).

(ii) what amounts to a question of law?

(iii) was there a question of law in the present case?

(iv) whether there was a valid surrender of the impugned land by Orchard
G Circle to the State Authority.

The Application Of The Proviso Of Section 49(1) Of The LAA 1960

[3] Section 49(1) of the LAA 1960 provides:

> 49. (1) Any person interested, including the Land Administrator and any
H person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> **Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.** (emphasis added)

I **[4]** The reading of the above proviso is clear that there shall be no appeal on a decision that comprises the award of compensation. However, if there is a question of law concerning compensation, the door is still open for further appeal to the Court of Appeal and the Federal Court.

[5] The interpretation of the proviso has been made by this court in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526, where this was said:

> [155] To sum up, *the proviso to sub-s. 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation.* Instead, the bar to appeal in sub-s. 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore, an *aggrieved party has the right to appeal against the decision of the High Court on questions of law.* (emphasis added)

[6] On this interpretation of the proviso to s. 49(1), in another case of *Pentadbir Tanah Daerah Johor v. Nusantara Daya Sdn Bhd* [2021] 7 CLJ 1; [2021] 4 MLJ 570, this court acknowledged the proposition of law in *Semenyih Jaya* but added that the question of law must be given a narrow interpretation. The court explained:

> [37] *Although the Federal Court in Semenyih Jaya decided that there was still a right of appeal from a decision of the High Court on compensation if the appeal was on questions of law, that the bar was 'limited to issues of fact on ground of quantum of compensation', there was, however, no definition or indication as to what may amount to a question of law within the context and purpose of s. 49(1), especially its proviso.* Certainly, at no time did the Federal Court in *Semenyih Jaya* define or even attempt to define in any manner whatsoever, the meaning to be ascribed to the phrase 'question of law'. And, we must immediately dispel any thoughts harboured to the effect that the six questions of law or even the two constitutional questions posed in *Semenyih Jaya* necessarily fall within the ambit and meaning of question of law as envisaged in para. [155] of its decision.
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> …
>
> [61] Yet another *reason why a narrow construction must be given* to the phrase 'question of law' is that in *Semenyih Jaya*, the specific question of law posed in respect of s. 49(1) itself was directed at *whether there could nevertheless be an appeal on compensation where it involves a question of law. To this, the Federal Court answered in the affirmative.*
>
> [81] The allegations of acting without evidence or acting against the evidence of a particular witness or report; or how a particular piece of evidence is to be treated, as raised in the questions posed, are actually complaints generally made in order to meet the general principles for appellate intervention. The views expressed by Michael Barnes in *The Law of Compulsory Purchase and Compensation* and by Lord Denning MR in *Ashbridge Investments Ltd v. Minister of Housing and Local Government* [1965] 1 WLR 1320, that such complaints are points of law which may be raised on appeal and for which reasons the appellate court may interfere in the trial court's findings, is generally correct in the context and in relation to appeals sans the proviso to s. 49(1). *But for the clear terms of the proviso, such appeals on points of law may be entertained even if the appeal is on compensation or the amount of compensation.* However, in the presence of the plain terms

of the proviso, and the restrictive reading which we must give to the meaning of question of law as allowed in *Semenyih Jaya*, such complaints or grounds do not render or make the questions posed, questions of law. (emphasis added)

What Amounts To A Question Of Law?

[7] A question of law essentially involves the interpretation of the law and the application of the law to the facts of the case. There is a plethora of cases that discussed the meaning of the question of law and, among others, the Federal Court case of *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1, which discussed the issue as follows:

What Is A Question of Law?

[46] It follows from the preceding paragraph that appeals to the Court of Appeal and to the Federal Court may only be mounted on questions of law. In a general sense, a question of law is *an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts* of each individual case. What is a question of law has also been discussed and formulated in a line of cases:

(i) questions of law are questions about *what the correct legal test is.* Questions of mixed law and fact are questions about *whether the facts satisfy the legal tests: Canada (Director of Investigation and Research v. Southam Inc.* [1997] 1 SCR 748);

(ii) a question of law is a *question concerning the legal effect to be given to a set of undisputed facts.* This includes an issue which involves the application or interpretation of a law (*Carrier Lumber Ltd v. Joe Martin & Sons Ltd* [2003] BCJ No. 1602);

(iii) the question of *whether a decision-maker has jurisdiction* to determine a particular matter is usually considered a question of law reviewable by a court on a standard or correctness (*Premium Brands Operating GP Inc v. Turner Distribution Systems Limited* [2010] BCJ No. 349);

(iv) questions of law *involve errors of law* committed by a decision-maker. Errors of law includes the application of the wrong law, or a finding of fact in complete absence of any evidence (*Southam*, *supra* at [39]; *I-Ntelink Inc v. Broadband Communications North Inc* [2017] MBQB 146);

(v) questions *where there is real doubt as to the law on a particular point* (*Datuk Syed Kechik Syed Mohamed & Anor v. The Board of Trustees of The Sabah Foundation & Ors* [1999] 1 CLJ 325 (FC);

(vi) questions of law include *the correctness of (a) pure statements of law (eg, as to correct interpretation of a statutory provision), and (b) the inferring of a conclusion from the primary facts (where the process inference involves assumptions as to the legal effect of consequences of the primary facts)* (*Director-General of Inland Revenue v. Rakyat Berjaya Sdn Bhd* [1984] 1 CLJ 219; [1984] 1 CLJ (Rep) 108; [1984] 1 MLJ 248, 252 (FC)).

(emphasis added)

[8] This court in the *Nusantara Daya* had accepted the proposition set down in the *Amitabha Guha* with a rider that it should not be given a liberal reading that negates the clear intent of s. 49(1) of the LAA 1960 and amounts to an appeal on compensation. At paras. [51] and [52] of the case, this was said:

> [51] As a starting point, *we would adopt the general proposition as set down in Amitabha Guha No 2*, that 'In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case', *but with a strong rider and only to that extent.* This general proposition must be appreciated, understood, and applied in the context of the proviso to s. 49(1), ruled by this court in *Semenyih Jaya* to be a valid provision of law, that s. 49(1) limiting the right of appeal does not violate arts. 13 and 121(1B) of the Federal Constitution.
>
> [52] This general proposition also is *not to be taken as suggesting, even for the slightest moment, that s. 49(1) is to be given a liberal reading so as to render nugatory the clear intent of precluding appeals from decisions of the High Court on compensation.* This proposition is not to be read as allowing in any way, *what in pith and substance, are appeals on compensation* ... (emphasis added)

[9] In the *Nusantara Daya*, it was decided that the questions posed were not questions of law, and the issues raised fell within the parameter of the proviso of s. 49(1). The ten questions posed in that case relate to three main points which are:

(i) the issue of making a 10% deduction from the market value.

(ii) the double counting of 5% for location; 10% for access; and yet another 5% for layer when all are three sides of the same pyramid and that separate deductions for similar if not identical characteristics of the scheduled land is a clear instance of double counting.

(iii) finding that the potential development value of the scheduled land had already been factored into the transacted value of Comparable No.1 when that comparable had no development potential.

[10] It was further held in that case that the questions posed were all about the award of compensation and no real questions of law. Paragraphs [79] and [111] of the case states as follows:

> [79] Having examined all the questions posed, whether we take the ten questions as posed or as grouped into the 'three issues', **these questions or issues are all about the award of compensation** that was made by the High Court, **how the final amount was arrived at and how that amount was wrong**. At the end of the day, the High Court, assisted by the assessors, made various deductions in order to arrive at the market value. The High Court, as a Land Reference Court was entitled to make those deductions for the reasons stated, as those deductions are very much fact-

based decisions, based on evidence adduced, the analysis of such evidence involving the court's appreciation and impression of such evidence when applying principles of valuation to the facts. Room must be given for a divergence of opinion on the evaluation of such evidence; more so when the appeal is statutorily limited.

…

[111] **None of the questions posed by the respondent at the Court of Appeal were real questions of law**. We thus unanimously allow the appeal and set aside the decision of the Court of Appeal and restore the decision of the High Court dated 9 August 2018.

(emphasis added)

Was There Any Question Of Law In The Present Case?

[11] Before answering the above question, it is appropriate to set down the important facts concerning the issue of question of law in the present case.

[12] On 7 June 2011, a second land inquiry was held concerning Orchard Circle's acquired land by the State Authority, the decision of the High Court in a judicial review application by Orchard Circle. In this land inquiry, there were two main issues adjudicated by the Land Administrator which were the issues of the surrender of land by Orchard Circle and the issue of compensation. The issue of surrender of the land relates to the Orchard Circle's 17,284.67 sq meters of land which were said to have been surrendered to the State Authority and was awarded nominal compensation of RM10 for the surrendered portion. In the land inquiry notes of proceedings dated 7 June 2011, it states:

LA: Tujuan inquiri pada pagi ini adalah untuk menentukan **samada bahagian tanah tersebut telah diserahkan atau pun tidak**. Kami akan mendengar keterangan mengenai penyerahan. Siasatan sambungan akan dijalankan bagi menentukan penilaian …

…

LA: Pada pagi ini, **kami akan membuat penentuan mengenai isu penyerahan. Bukan berkenaan penilaian.** Boleh kita bersambung dulu mendengar keterangan saksi **berkenaan penyerahan.** (emphasis added)

[13] On 20 April 2012, the Land Administrator decided that there was a surrender of the said land by Orchard Circle to the State Authority, which is reflected in his grounds of judgment as follows:

3.0 Keputusan

3.1 Di dalam pelan pra-perhitungan pecah sempadan (pelan bil. MPKj/PB/KM/6-98) yang diluluskan bertarikh 3 September 1998, rezab jalan dan Lorong ditandakan di bawah "kemudahan" Bersama-sama dengan Rezab rawatan najis, pencawang Tenaga Nasional Berhad, Simpanan parit, Taman Bandar, Simpanan kolam takungan, Kawasan lapang/hijau dan Tempat letak kereta. *Selain daripada itu,*

buffer zone juga diserahkan melalui Borang 12B (Seksyen 200 KTN 1965, walaupun tidak ditandakan dengan petunjuk). Berdasarkan kepada Borang 12B yang diserah hantar dan diluluskan oleh Pengarah Tanah dan Galian Negeri Selangor pada 11 Januari 1999 maka telah berlaku penyerahan sebahagian daripada tanah bagi lot-lot berkenaan. Maka tanah-tanah tersebut telah menjadi tanah kerajaan (State Land) pada tarikh 11 Januari 1999 dan pihak Orchard Circle Sdn Bhd tidak lagi mempunyai kepentingan ke atas tanah tersebut. (emphasis added)

[14] In this regard, the Land Administrator, among others, considered s. 200 of the National Land Code in coming to his decision that there was a surrender of the impugned land by Orchard Circle to the State Authority.

[15] The matter was later taken up to the Court of Appeal in *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Orchard Circle Sdn Bhd & Ors And Other Appeals* [2018] 1 CLJ 239, which decided among others that the issue of compensation payable and the issue of surrender of the lands be addressed by parties at the land reference proceedings. The order is as follows:

> [37] For reasons stated above, we dismiss Appeal 131 and allow the Appeals 114, 121, and 122 and make the following orders:
>
> (a); (b) ...
>
> (c) an order that all objections taken in connection with the Land Administrator's findings in the second land inquiry **with regard to compensation payable** and **the issue of surrender of the lands** be addressed by the parties at the land reference proceedings;
>
> (emphasis added)

[16] In the land reference proceedings at the High Court, based on the written submission, both parties submitted at length the two issues directed by the Court of Appeal, which were the issue of the surrender of the impugned land by Orchard Circle and the issue of compensation. In essence, counsel for Orchard Circle submitted that there was no surrender of the lands under the NLC as the provisions of ss. 196(1)(c), 200(1), and 201(4) had not been complied with. Conversely, it was submitted on behalf of SILK that Orchard Circle is estopped from denying that it had agreed to surrender, the land based on its conduct in particular, the filing of Form 12B for the surrender which was eventually approved by the Pentadbir Tanah Galian Selangor. Pentadbir Tanah Daerah Hulu Langat also took the same position in its submission.

[17] The High Court also considered both issues of the surrender of the lands and compensation separately. As regards the issue of surrender of lands, the High Court was of the view that the provision of s. 200 of the NLC had been complied with, and as such, the surrender of the lands by Orchard Circle was effective. In the grounds of judgment, this was said:

A

> [38] In the case before this court, **since Form 12B was signed and submitted by OC in compliance with section 200 of the NLC and the Land Office approved the surrender.** In the view of this court, even without OC surrendering their original title so in order for endorsement to be made, **the surrender is still effective.** (emphasis added)

B **[18]** Similarly, the High Court had considered s. 200 of the NLC and its compliance, in coming to a finding that the surrender of lands by Orchard Circle was effective and maintained the nominal award granted by the Land Administrator for the surrendered land.

[19] At the Court of Appeal, counsel for Orchard Circle, among others,
C raised the same question on the issue of the validity of the surrender of the impugned land. In the Orchard Circle's written submission, the question below was crafted for the determination of the court:

> *Question of law (surrender)*
>
> D *A. Whether the learned judge was correct in upholding the land administrator's finding that there was surrender of 17,284.67 square meters of Orchard's Land.* (emphasis added)

[20] It was then submitted, as was raised before the Land Administrator and the High Court, that the provisions of ss. 196(1)(c), 200(1), 201(4) of the
E NLC had not been complied with and as such, there was no surrender of the impugned land by Orchard Circle to the State Authority.

[21] Counsel for SILK, on the other hand, among others, submitted that apart from the proviso of s. 49(1) of the LAA 1960 is applicable that bars Orchid Circle's appeal, the validity of the surrender of the lands is irrelevant
F as no value can be ascribed to the land that has been surrendered.

[22] The Court of Appeal, as reflected in the grounds of judgment, decided that there were questions of facts and law in the appeal. The issue of whether the procedure for the surrender of land had or had not been complied with is a question of fact and whether the surrender of the impugned land took
G place is a question of law. At paras. [11], [12], and [16] of the grounds of judgment, this was said:

> [11] It is trite that there shall be no appeal against the decision of the High Court when the decision comprises of an award of compensation (see s. 49(1) of the LAA). *In the instance case, the appellant raised a question*
> H *which is whether the impugned land had or had not been surrendered. This question, in the opinion of this Court, raises a question of fact as well as law.*
>
> [12] The finding of whether the procedure for surrender of the impugned land had or had not been complied with is indeed a question of fact. However, *the finding of when the surrender of the impugned land took effect is a question of law,* in order to determine the latter, it is inevitable that the
> I exercise has to encroach onto the former. Therefore, the question raised by the appellant contains a mixture of both fact and law. The 2nd respondent's counsel's submission that there was no question of law raised before this Court is not entirely correct.

…

[16] This Court finds it is necessary to examine the provisions of the NLC in Part Twelve – Surrender of Title, particularly from s. 196 to 201 of the NLC, in order to determine when the surrender of the impugned land had been effected under the NLC. The question raised by the appellant is in the form of a question of fact, but in substance is a question of law. Hence, *this Court is of the considered view that the appellant's appeal has met the threshold of appealability under s. 49(1) of the LAA.* (emphasis added)

[23] The Court of Appeal also concluded that the issue before the court is not on the adequacy of the compensation but on whether the value of the impugned land ought to be assessed. This could only be done if the legal issue of the surrender of the impugned land is determined. The Court of Appeal at para. [17] explained:

[17] Flowing from the above, the outcome of the finding of the question of law will definitely have a direct bearing on the award of compensation. However, *the issue here in relation to the award of compensation is not about whether the acquisition of the land was adequately compensated or not. The real issue is whether the value of the impugned land ought to be assessed or not.* If the law requires the value of the impugned land ought to be assessed or not. If the law requires the value of the impugned land to be assessed, but it was not done, then the issue is not about award of compensation. The material issue is whether the proper adjectival law was administered and accorded to the appellant for the compulsory acquisition of the impugned land. *Therefore, in substance, this appeal is not a complaint pertaining to the award of compensation, but pertains to whether the appellant had the right of fair assessment for its impugned land.* (emphasis added)

[24] Having considered the material facts in the present case and the issue of the surrender of the land by Orchard Circle, it is clear that the issue of the surrender of the land is pertinent to be determined by the court and it is a question of law as the validity of the surrender of land has been laid down in the NLC, particularly from ss. 196 to 201. Here, it involves the interpretation and the application of the said provisions to the facts of the present case as were done by the Land Administrator, the High Court, and the Court of Appeal in coming to their decision. The guidelines for determining the question of law in *Amitabha Guha*'s have been satisfied in the present case and even the narrow interpretation of the question of law in *Nusantara Daya*'s have been complied with. The appeal in the present case, in pith and substance, was not an appeal against the inadequacy of compensation.

[25] Further, the question posed in the present case has some similarities with the second question of law posed and answered by this court in *Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors* [2022] 2 CLJ 1; [2022] 1 MLJ 701, which was as follows:

> Assuming that Subject Land Lot 18903 was the agreed lot to be surrendered to Majlis Perbandaran Shah Alam (which is denied) *whether there was a valid surrender of Subject Land Lot 18903 under sections 196(1)(c) read with 196(2)(a) of the NLC when the consent of the chargee had not been obtained.* (emphasis added)

[26] As a result, there was a question of law in the present case and as such, the appeal of Orchard Circle to the Court of Appeal and this court is not barred by the proviso of s. 49(1) of the LAA 1960.

Whether There Was A Valid Surrender Of The Impugned Land By Orchard Circle To The State Authority

[27] The National Land Code, in particular ss. 196 to 201, has laid down the conditions and requirements for a valid surrender of land. These statutory conditions and requirements must be complied with and adhered to strictly to make the surrender of land legally valid. Parliament enacted the law with the purpose, among others, of protecting the interest of the registered proprietor. The provisions are not meant to be nugatory or otiose. The non-compliance of the statutory requirements would only result in the non-surrendering of the land under the law.

[28] On this issue, the Federal Court in *Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors* (*supra*) succinctly explained in the following words:

> [51] It is clear that *in order to be a valid surrender, the procedure under s. 200 of the NLC must be complied with.* With respect, we are of the view that the High Court and the majority in the Court of Appeal erred in law in reaching the decision that there was a valid surrender as the previous owners did not object to the construction of the retention pond and structures on the land. On the factual matrix of the present case, as alluded to earlier in the judgment, *there was no evidence to show that any of the procedures in ss. 96, 200, and 201 of the NLC had been adhered to. There was no consent in writing from the person or body who has registered interest in the land (CIMB/chargee) as required by s. 196(1)(c) read together with s. 196(2)(a) of NLC.*
>
> [52] We would like to emphasis that *the surrender of any private land must be made with the consent of both the registered proprietor and the State Authority and must be strictly complied with the relevant statutory provisions of the NLC.* We venture to say that *these provisions are made for the purpose of safeguarding the interest of the registered proprietor.* Where the procedures as stipulated by the provisions of the NLC are not adhered to, grave doubts are cast on the validity and/or legality of the surrender. In the absence of the consent of CIMB/chargee and by merely relying on the documents and/or letters produced by the respondents as enumerated in para. [7] of this judgment, *it cannot be assumed that all mandatory requirements under the provisions of the NLC had been adhered to when the State Authority gave its consent for the transfer.* (emphasis added)

[29] In the *Bayangan Sepadu*, this court held, among others, that as there was no written consent for the surrender of the land from the chargee, CIMB Bank, the provisions of s. 196(1)(c) read with s. 196(2)(a) has not been complied with, resulting the surrender of land invalid. In that case, there are two questions of law posed for the determination of the Federal Court, which were:

(i) Assuming that Subject Land Lot 18903 was the agreed lot to be surrendered to Majlis Perbandaran Shah Alam which is denied) *whether the right of the appellant as the registered owner under sections 89 (conclusiveness of register documents of title) and 340 of the NLC (registration to confer indefeasible title) can be defeated by a promise to surrender the said property made by the Previous Owners;* and

(ii) Assuming that Subject Land Lot 18903 was the agreed lot to be surrendered to Majlis Perbandaran Shah Alam (which is denied) *whether there was a valid surrender of Subject Land Lot 18903 under sections 196(1)(c) read with 196(2)(a) of the NLC when the consent of the chargee had not been obtained.* (emphasis added)

[30] This court, in that case, answered both questions in the negative as reflected at para. [64] of the judgment as follows:

[64] For the foregoing reasons, we would answer both the questions of law posed for our determination in the negative …

[31] Reverting to the present case, it is apt to refer to the relevant provisions of the NLC. Firstly, s. 196(1) and (2) states as follows:

Conditions for approval of surrender

196. (1) No surrender, whether of the whole or a part only of any alienated land, shall be approved by the State Director or, as the case may be, Land Administrator unless the following conditions are satisfied:

(a) that no item of land revenue is outstanding in respect of the land;

(aa) that the land will not create or cause any liabilities to the State Authority;

(b) that the land is not under attachment by any court; and

(c) *that every person or body specified in subsection (2) has consented in writing to the making of the application.*

(2) The said persons and bodies are -

(a) *any person or body who, at the time when the approval was applied for, was entitled to the benefit of any registered interest affecting the land or, as the case may be, the part to be surrendered (including a charge of any lease or sublease);*

(b) any person or body having at that time a lien over the said land or part, or over any lease or sublease thereof;

A (c) any person or body entitled at that time to the benefit of any tenancy exempt from registration affecting the said land or part, being a tenancy protected by an endorsement on the register document of title; and (d) any person or body having at that time a claim protected by caveat affecting the said land or part or any interest therein.

B (3) No surrender of a part only of any alienated land shall be approved if, in the opinion of the State Director or, as the case may be, Land Administrator, the area of the part is such that a subdivision of the land ought first to be effected. (emphasis added)

C **[32]** In the present case, Orchard Circle was the registered proprietor of the impugned land and Arab Malaysian Merchant Bank was the chargee of the land since 4 November 1997. Both entities had legal interest over the impugned land and thus, under s. 196(1)(c) read with s. 196(2)(a), their consent in writing needs to be obtained before the surrender of the land be approved by the State Director. Unfortunately, there was no such consent in
D the present case. Hence, the provision of s. 196(1) has not been complied with.

[33] In this regard, counsel for SILK submitted that the filing of Form 12B under s. 200 of the NLC shows that Orchid Circle had consented to the
E surrender of the impugned land. This contention is flawed for the following reasons. First, Form 12B filed by Orchard Circle was not a written consent by Orchard Circle envisaged under s. 196(1)(c) of the NLC. Section 196(1)(c) states that there must be written consent to the making of the application. Therefore, there must be prior separate written consent to the making of the
F application for surrender of the land through Form 12B. This is also mentioned in Form 12B itself which states:

Huraian – Persetujuan dengan bertulis adalah dikehendaki daripada tiap-tiap orang –

(i) Yang berhak mendapat faedah daripada apa-apa jua kepentingan
G berdaftar mengenai bahagian tanah yang hendak diserahkan balik itu (termasuk gadaian apa-apa jua pajakannya)

(ii) …

(iii) …

(iv) …

H **[34]** Further, s. 200(1) of the NLC provides:

200 (1) *Any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Land Administrator in Form 12B, and shall be accompanied by -*

I (a) such fee as may be prescribed;

(b) a plan showing the details of the proposal, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

(c) *all such written consents to the making of the application as are required under paragraph 196(1)(c);* and

(d) subject to subsection (3), the issue document of title to the land.

(2) Upon receiving any such application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

(3) An application under subsection (1) may be submitted without the issue document of title if that document is in the hands of any person as chargee, or has been deposited with any person as security for a loan; but in any such case, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person under subsection 244(2) or, as the case may be, subsection 281(4), for the production of the document at the Land Office within fourteen days of the date thereof.

(4) In a case falling within subsection (3), no action shall be taken on the application until the issue document, or a replacement thereof, is in the hands of the Land Administrator; and accordingly, if the document is not produced pursuant to the request referred to in that subsection, or to any notice served under section 15 on default in compliance with the request, title in continuation (or, where appropriate, a duplicate issue document only) shall be prepared under Chapter 3 of Part Ten as if the circumstances were as specified in paragraph 166(1)(c). (emphasis added)

[35] Hence, s. 200(1)(c) requires the application for the surrender of land through Form 12B to be accompanied, among others, by a written consent as envisaged under s. 196(1)(c).

[36] In the circumstances, the contention that Form 12B was the written consent by Orchard Circle under s. 196(1)(c) is untenable. Besides, it is an undisputed fact that the chargee of the surrendered land, the Arab Malaysian Merchant Bank also has not given any written consent for the surrender of the land.

[37] The High Court in coming to its decision that there was an effective surrender of the impugned land, had failed to address the pertinent issue of no written consent by Orchard Circle, the proprietor, and the chargee, Arab Malaysian Merchant Bank, as envisaged in s. 196(1) of the NLC.

[38] Be that as it may, the Land Administrator in the present case also failed to comply with the procedure of s. 201(4) of the NLC upon approval of the surrender of the impugned land, that is the Land Administrator is

A required to revise the rent payable by the proprietor, notify the proprietor of the approval and make a memorial of the surrender on the register and the documents of title. These were not done.

Section 201(4) provides:

B (4) *On approving, or being informed by the State Director that he has approved,* the surrender, the *Land Administrator shall* –

(a) *revise* (by reference to the estimated area of the part to be retained) *the rent payable by the proprietor;*

(b) *notify the proprietor* of the approval and the revised rent; and

C (c) *make,* or cause to be made, *a memorial of the surrender on the register and issue documents of title to the land.* (emphasis added)

[39] In determining the issue at hand in the present case, the Federal Court case of *Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 CLJ 1; [2021] 1 MLJ 180 is of no assistance as the issue of surrender D of Orchard Circle's impugned land under the NLC was not canvassed in that case.

[40] The provisions of the NLC on the conditions of a valid surrender of land alluded to earlier are unambiguous, of general application and without E any exception.

[41] As there was no valid surrender of the impugned land to the State Authority, the compensation for the impugned land needs to be assessed and as such, the order of the Court of Appeal to remit the case to the High Court for the assessment of the impugned land is most appropriate.

F **Conclusion**

[42] Based on the aforesaid reasons, there is no merit in the appellant's appeal for the intervention of this court. The appeal is dismissed with costs. The decision of the Court of Appeal is affirmed. My learned sister, Justice Rhodzariah, has read these broad grounds of judgment in the draft and has G agreed to it. My learned sister, Chief Judge of Malaya, Justice Hasnah, dissenting.

Hasnah Mohammed Hashim CJ (Malaya) (Dissenting):

H **[43]** We heard oral submissions by all learned counsels representing the respective parties and at the end of those submissions, we indicated that we needed time to consider the respective submissions. We have now reached our decision. What follows below are my deliberations on the issues raised and my reasons as to why I have so decided.

I **[44]** This appeal emanates from a decision of the High Court in the land reference proceedings where the learned judge decided as follows:

(i) that the area of land measuring 17,284.67 square meters has been surrendered (the surrendered area) by Orchard Circle Sdn Bhd (OCSB) and that the compensation awarded by the Land Administrator in the nominal sum of RM10 for the surrendered area is reasonable;

(ii) in respect of the area measuring 1,839.10 square meters of the land (area not surrendered), the learned High Court Judge maintained the Land Administrator's award of RM514,948;

(iii) late payment charges at the rate of 5% per annum on the sum of RM514,948 from the date of issuance of Form "K" on 20 February 2003 until the date of full and final settlement;

(iv) costs for the Government assessor in the sum of RM500 and costs for the private assessor in the sum of RM500 to be borne by OCSB and SILK had been paid; and

(v) the deposit for the Land Reference No. 15-99-09-2012 and the Land Reference No. 15-100-09-2012 be returned to OCSB and SILK.

[45] The issues in this appeal are as follows:

(i) whether the surrendered area has been surrendered is a question of law and if the answer affects an award of compensation, is such a question an issue relating to compensation or a pure question of law?

(ii) whether OCSB had a right of appeal against the High Court's decision in light of the provisions under the Land Acquisition Act 1960 (LAA) in particular ss. 37(2), 40D and 49(1) of the LAA and s. 68(1)(d) of the Courts of Judicature Act 1964 (CJA);

(iii) whether the fact that OCSB had surrendered the surrendered area is the correct test to determine 'adequate compensation'?;

(iv) whether OCSB had effectively surrendered the surrendered area in accordance with the provisions of the National Land Code (NLC) is an irrelevant consideration in determining 'adequate compensation';

(v) whether the Court of Appeal is correct in its finding that just because the requirements under the NLC for the surrender of lands have not been complied with, nominal value could not be ascribed to the said land that have been surrendered especially when the court agreed that OCSB had intended to surrender the land for its development?;

(vi) whether the Court of Appeal is correct in remitting the matter back to the High Court for an assessment of the value of the surrendered area on the basis that it has not been surrendered when the learned High Court Judge had considered the issue?; and

A (vii) whether the Court of Appeal was correct in its finding that OCSB was not accorded the right to present its case on the basis that the surrendered area had yet to be surrendered, when in fact OCSB in its valuation report, had valued the compensation of the entire acquired land, including the surrendered area, at market value and claimed for
B compensation in the sum of RM16,056,000.

The Statutory Provisions

[46] It is helpful to refer to the relevant provisions of the National Land Code (NLC) and the Land Acquisition Act 1960 (LAA) before discussing the facts and the proceedings in respect of this appeal.
C

[47] For ease of reference in respect of the surrender, the relevant provisions of the NLC are, ss. 196(1)(c), 196(2)(a), 200 and 201 of the NLC are reproduced as follows:

Conditions for approval of surrender

D (1) No surrender, whether of the whole or a part only of any alienated land, shall be approved by the State Director or, as the case may be, Land Administrator unless the following conditions are satisfied:

(a) that no item of land revenue is outstanding in respect of the land;
E

(aa) that the land will not create or cause any liabilities to the State Authority;

(b) that the land is not under attachment by any court; and

(c) that every person or body specified in subsection (2) has
F consented in writing to the making of the application.

(2) The said persons and bodies are -

(a) any person or body who, at the time when the approval was applied for, was entitled to the benefit of any registered interest affecting the land or, as the case may be, the part to be
G surrendered (including a charge of any lease or sublease);

(b) any person or body having at that time a lien over the said land or part, or over any lease or sublease thereof;

(c) any person or body entitled at that time to the benefit of any tenancy exempt from registration affecting the said land or part,
H being a tenancy protected by an endorsement on the register document of title; and

(d) any person or body having at that time a claim protected by caveat affecting the said land or part or any interest therein.

I (3) No surrender of a part only of any alienated land shall be approved if, in the opinion of the State Director or, as the case may be, Land Administrator, the area of the part is such that a subdivision of the land ought first to be effected.

Applications for approval of surrender of part.

200(1) Any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Land Administrator in Form 12B, and shall be accompanied by -

(a) such fee as may be prescribed;

(b) a plan showing the details of the proposal, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

(c) all such written consents to the making of the application as are required under paragraph (c) of sub-section (1) of section 196; and

(d) subject to sub-section (3), the issue document of title to the land.

(2) Upon receiving any such application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

(3) An application under sub-section (1) may be submitted without the issue document of title if that document is in the hands of any person as chargee, or has been deposited with any person as security for a loan; but in any such case, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person under sub-section (2) of section 244 or, as the case may be, sub-section (4) of section 281, for the production of the document at the Land Office within fourteen days of the date thereof.

(4) In a case falling within sub-section (3), no action shall be taken on the application until the issue document, or a replacement thereof, is in the hands of the Land Administrator; and accordingly, if the document is not produced pursuant to the request referred to in that sub-section, or to any notice served under section 15 on default in compliance with the request, title in continuation (or, where appropriate, a duplicate issue document only) shall be prepared under Chapter 3 of Part Ten as if the circumstances were as specified in paragraph (c) of sub-section (1) of section 166.

Procedure on applications.

201(1) Where any application under sub-section (1) of section 200 relates to land the surrender of which requires the approval of the State Director, the Land Administrator shall refer the application to him, together with his recommendations thereon.

(2) If on any application under the said sub-section the Land Administrator or, in a case referred to him as aforesaid, State Director is satisfied -

(a) (Deleted by Act A832).

(b) that the conditions specified in sub-section (1) of section 196 are fulfilled, and

A (c) that approval ought not to be withheld on the grounds specified in sub-section (3) of that section,

he shall approve the surrender.

(3) In any other case, the Land Administrator or, as the case may be, State Director shall reject the application.

B (4) On approving, or being informed by the State Director that he has approved, the surrender, the Land Administrator shall -

(a) revise (by reference to the estimated area of the part to be retained) the rent payable by the proprietor;

C (b) notify the proprietor of the approval and the revised rent; and

(c) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land.

(5) On rejecting, or being informed by the State Director that he has rejected, the application, the Land Administrator shall -

D (a) notify the proprietor; and

(b) cancel, or cause to be cancelled, the note endorsed on the register document of title pursuant to sub-section (2) of section 200.

[48] The procedure on land acquisition and the relevant provisions of the E LAA in respect of this appeal are as follows.

[49] Section 7 of the LAA provides that when any lands are required for any purposes, as stated in s. 3 of the LAA, the Land Administrator shall prepare and submit to the State Authority the following:

F (i) a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire; and

(ii) a list of such lands, in Form C.

[50] Section 8 of the LAA provides that when the State Authority decides G that any of the lands referred to in s. 7 are needed for any of the purposes referred to in s. 3 of the LAA then a declaration in Form D as prescribed shall be published in the *Gazette*. The declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

H **[51]** Section 8(4) of the LAA further stipulates that a declaration under sub-s. (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the *Gazette* in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under sub-s. 14(1) of the same Act within the said period of two years. All proceedings already taken or being taken in consequence of such I declaration in respect of such land or such part of the land shall terminate and be of no effect.

[52] The proposed land to be acquired must be marked out and a notice must be entered on the register document of title as required under s. 9 of the LAA:

(1) Upon the publication pursuant to section 8 of the declaration in Form D that any land is needed for the purpose specified in such Form, then -

(a) the Land Administrator shall cause the areas affected by the acquisition to be marked out upon the land, unless this has already been done to his satisfaction; and

(b) the Land Administrator or other registering authority shall make a note of the intended acquisition in the manner specified in subsection (2).

(2) The note of the intended acquisition required by paragraph (1)(b) shall be made -

(a) where the scheduled land is held by registered title -

(i) on the register document of title; and

(ii) in the case of land with subdivided building or land, on the relevant strata register under section 4 of the Strata Titles Act 1985 [Act 318]; or

(b) where the scheduled land is occupied in expectation of title, upon the Register of Approved Applications, Register of Holdings or other appropriate register.

[53] Under the LAA, the Land Administrator must conduct an enquiry. Section 12 of the LAA reads as follows:

(1) On the date appointed under of sub-s. 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

(2) The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.

(3) The Land Administrator may for a sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time.

(4) The Land Administrator shall record all the evidence during the enquiry.

[54] Reference to court by the Land Administrator is provided under s. 36 of the LAA:

> (1) No reference to court under this Act shall be made otherwise than by the Land Administrator.
>
> (2) The Land Administrator may, at any time of his own motion by application in Form M refer to the court for its determination any question as to:
>
> (a) the true construction or validity or effect of any instrument;
>
> (b) the person entitled to a right or interest in land;
>
> (c) the extent or nature of such right or interest;
>
> (d) the apportionment of compensation for such right or interest;
>
> (e) the persons to whom such compensation is payable;
>
> (f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne.
>
> (3) Without prejudice to the powers of the court under this part, the costs of any reference under sub-s. (2) shall be borne by such person as the court may direct or, in the absence of such direction, by the Land Administrator.
>
> (4) After an award has been made under s. 14 or compensation made under s. 35 or Part VII the Land Administrator shall refer to the court for determination any objection to such award or compensation duly made in accordance with this part.

[55] Section 37 of the LAA reads as follows:

> Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
>
> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.

[56] Any objection made under s. 37 shall be made by a written application in the prescribed Form N to the Land Administrator requiring that he refer the matter to the court for its determination. Such application shall state fully the grounds on which objection to the award is taken, and at any hearing in court no other grounds shall be given in argument, without leave of the court (re: s. 38(1) of the LAA).

[57] In respect of appeal, s. 49 of the LAA provides as follows: A

> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom. B

Factual Background

[58] OCSB decided to surrender part of its land and submitted an application *vide* the prescribed Form 9A dated 5 September 1998 to C surrender a portion of land to the Land Administrator of Hulu Langat District pursuant to s. 200 of the NLC for the construction of "Jalan, Simpanan Parit JPS, Kolam Takungan Air JPS, Taman Bandar, Tempat Letak Kereta, Buffer Zone" by filing the prescribed Form 12B as required by the law. The construction of the road and others were necessary as part D of a commercial development project known as "Pusat Dagangan Putra Kajang". OCSB is the owner and developer of the said project. The application was approved by the State Authority on 11 January 1999.

[59] Subsequently, on 10 December 2001, Form D as prescribed under the LAA was issued to OCSB by the Government to compulsorily acquired the E lands held under Lots 8630 (9.005.08sqm) and 2630 (10,118.69sqm), Geran No: 30006 in Mukim Kajang, District of Hulu Langat, Selangor Darul Ehsan (the lands) belonging to OCSB to construct the Kajang Traffic Dispersal Highway (SILK Highway). A total of 19,123.77sqm of land was acquired. The Selangor State Authority published in the Selangor Government *Gazette* F dated 20 December 2001 Form D pursuant to s. 8 of the LAA 1960 declaring that the lands would be acquired for public purpose.

[60] The first land inquiry was held on 24 December 2002 about the acquisition (first land inquiry). OCSB was awarded nominal compensation of RM1 (first award) on the basis that a portion of the lands had already been G surrendered by OCSB to the State Authority. Form G and Form H, dated 24 December 2002, were issued in relation to the first land inquiry.

[61] On 30 January 2003, OCSB filed the first judicial review application for an order, among others, to quash the first award and a declaration that the acquisition of the lands was null and void (first JR application). In its H application, OCSB alleged that it was not given a right to be heard at the first land inquiry. The lands had already been formally taken possession of when Form K was issued on 20 February 2003 in accordance with s. 22 of the LAA 1960. The memorial was endorsed in the register document of title after the issuance of Form K. I

[62] The second land inquiry was subsequently held by the Land Administrator on 17 February 2011 and on 20 April 2012, the Land Administrator ordered as follows:

(i) 17,284.67 square meters of the land have been surrendered by OCSB to the State Authority (surrendered area). The Land Administrator awarded nominal compensation of RM10 for the surrendered area; and

(ii) 1,839.10 square meters of the lands were not surrendered and the Land Administrator awarded compensation of RM514,948 (the second award).

[63] The second award replaced the first award, as ordered by the High Court in the first JR application. Unhappy with the Land Administrator's decision, OCSB filed a second judicial review against the Land Administrator, Director of the Department of the Director-General of Lands and Mines State of Selangor, Government of the State of Selangor and Government of Malaysia (the second JR application). Both OCSB and Sistem Lingkaran Lebuhraya Kajang Sdn Bhd (SILK) filed Form N objecting to the second award on 31 May 2012. The land reference proceedings in Form N filed by both OCSB and SILK were consolidated and stayed until the final disposal of the second JR application. SILK applied to, among others, intervene in the second JR application ("SILK's intervening application") and on 19 August 2013, SILK's application was allowed. The hearing of the second JR application was heard on 6 January 2016 and on 7 March 2016, the High Court made the following orders:

(i) an order of *certiorari* to quash a Form D dated 10 December 2001 issued pursuant to s. 8(1) of the LAA 1960 and all proceedings following therefrom for the acquisition of the lands belonging to Orchard Circle;

(ii) an order of *certiorari* to quash Form G dated 20 April 2012 and Form H dated 20 April 2012 issued pursuant to ss. 14(1) and 16(1) of the LAA 1960 and all proceedings therefrom;

(iii) a declaration that:

(a) the acquisition or taking into possession of the lands by the respondents is null and void and of no legal effect; and

(b) OCSB is the lawful proprietor of the lands and it is entitled to possession thereof;

(iv) a re-inquiry of the acquisition of the lands is ordered after re-issuance of a new Form D.

[64] SILK and the other respondents appealed to the Court of Appeal against part of the decision of the High Court. OCSB appealed to the Court of Appeal against part of the decision of the High Court. OCSB also filed a

cross-appeal. Given the appeals, the land reference proceedings were stayed pending the disposal of the appeals and cross-appeal to the Court of Appeal by way of a consent order dated 24 May 2016.

[65] The Court of Appeal unanimously allowed SILK and the other respondents' appeals, dismissed OCSB's appeals, and ordered that the HC order for the second JR application be set aside.

[66] OCSB proceeded to apply for leave to appeal to the Federal Court on 17 August 2017. The land reference proceedings were stayed pending the final disposal of OCSB's appeal to the Federal Court by way of an order dated 3 November 2017. On 4 December 2017, the Federal Court allowed leave of the following two questions:

(i) whether, pursuant to s. 8(4) of the LAA 1960, a declaration in Form D automatically lapses and ceases to be of any effect where an award of the Land Administrator is made within the stipulated two-year period but subsequently quashed resulting in a subsequent award made outside the two-year period; and

(ii) whether the issues of *res judicata* and estoppel can clothe a declaration in Form D, which would otherwise lapse and cease to have any effect pursuant to s. 8(4) of the LAA 1960, with legal effect.

[67] The Federal Court opined that OCSB had benefitted from the first judicial review, the effect of which the first award was quashed (*certiorari*) and proceeded with a second land inquiry (*mandamus*) whereby OCSB participated. The order for *mandamus* by the first judge of the High Court (Hinshawati Shariff J) concluded that Form D was still valid. Hence, OCSB was precluded and estopped from challenging the validity of Form D in the second judicial review application. By proceeding with the second land inquiry before the Land Administrator and participating in the enquiry, OCSB had elected and accepted that the issue before the Land Administrator was on the decision and award of compensation and damages only. That was the position taken by OCSB after the first judicial review proceeding. Thus, the doctrine of estoppel applied in this case.

[68] The validity of the acquisition proceedings and whether OCSB was still the lawful proprietor of the said lands were previously raised in the first judicial review application before the COA. The COA opined that it would be an abuse of the court process to allow OCSB to renew its challenge on the propriety of the land acquisition proceedings in the second judicial review proceeding as the issues raised were caught by the doctrine of *res judicata*.

[69] The second question as framed did not appear to flow from the facts of the case. The applicability of the doctrine of estoppel and *res judicata* was an election made by OCSB in the conduct of litigation, which was peculiar. There was no issue of Form D lapsing because the original Form D was still

valid even during the second land inquiry. The doctrine of estoppel and *res judicata* was not applied to override s. 8(4) of the LAA as there was no contravention of that particular provision in the first place because the first award was made within two years. These issues ought to have been raised in the first judicial review application, in which the issues or matter had been decided in finality.

[70] The Federal Court affirmed the decision of the COA, which had ordered that all objections taken in connection with the Land Administrator's findings in the second land inquiry with regard to compensation payable and the issue of surrender of the lands be addressed by the parties at the land reference proceedings before the High Court Judge.

The High Court

[71] The High Court considered and addressed the issue of surrender of the lands. The learned High Court Judge concluded that there was a proper surrender of land prior to the land being acquired. Her Ladyship explained in her grounds of judgment:

> [34] In the considered view of this court, it does not matter that the SILK Highway only came into being after OC had surrendered the land. This is because the fact of the matter remains that OC had already surrendered the land. While it was argued by OC that the surrendered portion was used for the SILK Highway, this court is of the considered view that regardless of whether the surrendered portion was used for SILK Highway or not, the surrendered portion still falls within the ambit of public utility as opposed to private usage. The use of the SILK Highway, in the view of this court is clearly not for private usage.
>
> …
>
> [38] In the case before this court, since Form 12B was signed and submitted by OC in compliance with section 200 of the NLC and the Land Office approved the surrender. In the view of this court, even without OC surrendering their original title so in order for endorsement to be made, the surrender is still effective.
>
> …
>
> [40] Founded on the authority quoted and the facts of this case, even though there was no endorsement on the title, this court is of the considered view the surrender has happened. The endorsement on the title could not be carried out as OC did not surrender the original title to the land office for the purpose of endorsement. In the view of this court, this does not negate the fact that there was a surrender prior to SILK concessionaire coming into the picture.

The Court Of Appeal

[72] Aggrieved with the decision of the High Court, OCSB appealed to the Court of Appeal. Only one issue for determination is whether a total of 17,284.67m^2 (which is the surrendered area) out of 19,123.77m^2 of the

subject land for acquisition, namely Lot 2630 and Lot 8630 (the subject land), had or had not been surrendered to the State Authority according to the NLC under Part Twelve which deals with the surrender of title as at 20 December 2001.

[73] The COA concluded that the surrender of the impugned land could only be construed as effected upon the compliance of s. 201(4)(a) to (c) of the NLC. The word "shall" connote a mandatory obligation on the part of the Land Administrator to comply with the requirements under the aforesaid section. In this present case, there was no revision of the payable rent, no notification to the appellant of the approval and any revised rent and no memorial of the surrender was made on the register and issue documents of title to the impugned land on or before 2 December 2001, the date of the *Gazette* or 10 December 2001, the date stipulated in Form D.

[74] The COA agreed with OCSB that since the provisions of the NLC were not adhered to and there was no plan showing the details of the proposed surrendered land and the delivery of the issue document of title as required under the provisions in the NLC, grave doubt is therefore cast on the validity of the surrender on 11 January 1999.

[75] The COA opined that the approach taken by the High Court for the compensation in relation to the surrendered area on the basis that the land had already been surrendered was not correct and hence, the High Court fell into error of law in accepting that the surrendered area could not be assessed because it had already been surrendered. The COA opined that the fact that the impugned land was originally intended to be surrendered for the purpose of the appellant's development project would be a relevant factor to be considered in determining the land value in the assessment of the compensation amount.

Analysis And Decision

[76] For ease of reference, the salient chronological background of this appeal is summarised as follows:

Date	Event
11.1.1999	OCSB submitted Form 12B to surrender a portion of its land to the Land Administrator. The application was approved by the Land Administrator.
10.12.2001	Form D of the LAA was issued to compulsorily acquire the lands for the purpose of the "SILK Highway".
24.12.2002	The first land inquiry was held in relation to the acquisition. OCSB was awarded nominal compensation of RM1.00 on the basis that a portion of the lands had already been surrendered to the State Authority. Form G & H was issued in relation to the first land inquiry ("first award").

30.1.2003	OCSB filed the first judicial review application for an order among others, to quash the first Award ("first JR Application").
10.12.2010	Shah Alam High Court ordered as follows in relation to the first JR application ("HC order for first JR application"):
	(a) a *certiorari* to quash the first award; and
	(b) a *mandamus* to remit the matter back to the Land Office for a second land inquiry ("second land inquiry").
	In the oral grounds of the High Court's decision, the learned judge had found that OCSB was not given a right to be heard at the first land inquiry.
17.2.2011	The second land inquiry was held by the Land Administrator.
	At the second land inquiry, OCSB raised the following issues -
	(a) Form D had lapsed because no award was made within two years of the date of Form D; and
	(b) OCSB did not surrender any portion of the lands to the State Authority.
20.4.2012	Land Administrator decided as follows:
	(a) The issue of a lapsed Form D did not arise as his award is but an extension of the first award when the High Court in the first judicial review ordered a fresh land inquiry.
	(b) 17,284.67 sq meters of the lands were surrendered by OCSB to the State Authority and awarded nominal compensation of RM1.00 for the surrendered portion; and
	(c) 1,839.10 sq meters of the lands were not surrendered and the LA awarded compensation of RM514,948.00 - ("second award").
30.5.2012	OCSB filed the second judicial review application ("second JR application") and filed Form N in objection to the second award.
6.1.2016	The hearing of the 2nd JR.
7.3.2016	The High Court made the following Orders:
	(i) an order of *certiorari* to quash the Form D dated 10.1.2001 and all proceedings;

(ii) an order of *certiorari* to quash Form G dated 20.4.2012 and form H dated 20.4.2012;

(iii) a declaration that the acquisition of the Lands is null and void;

(iv) OCSB is the lawful proprietor; and

(v) A re-inquiry of the acquisition of the Lands after a reissuance of a new Form D

April 2016 — OCSB and Silk filed an appeal against the High Court's decision

9.8.2017 — The COA dismissed the appeal on damages and made the following orders:

(a) the High Court order dated 7 March 2016 be set aside;

(b) an order that Form D dated 10 December 2001 and all the acquisition proceedings therefrom are valid; and

(c) an order that all objections taken in connection with the Land Administrator's findings in the second land inquiry with regard to compensation payable and the issue of surrender of the lands be addressed by the parties at the land reference proceedings; and

(d) costs

4.12.2017 — The Federal Court allowed leave of 2 questions of law:

(1) Whether, pursuant to section 8(4) of the Land Acquisition Act 1960, a declaration in Form D lapses and ceases to be of any effect where an award of the Land Administrator is made within the stipulated two-year period but subsequently quashed resulting in a subsequent award made outside the two year period;

(2) Whether issues of *res judicata* and estoppel can clothe a declaration in Form D, which would otherwise lapse and cease to have any effect pursuant to section 8(4) of the Land Acquisition Act 1960, with legal effect.

13.11.2020 — The Federal Court dismissed the appeal by OCSB with costs of RM25,000 to the first and third respondents, RM25,000 to the second and fourth respondents and RM50,000 to fifth respondent. The decision of the Court of Appeal is affirmed.

[77] The main argument advanced by OCSB, as a respondent in the COA, is that the State Authority failed to comply with the provisions of Part Twelve of the NLC. Such non-compliance would render the surrender of the surrendered area on 11 January 1999 invalid for the purpose of assessment of compensation upon land acquisition. It is OCSB's contention that the surrendered area was never surrendered because the provision of the NLC was not complied when Form D dated 10 December 2001 was published in the *Gazette* on 20 December 2001. The Land Administrator, as well as the High Court Judge, were wrong to find that OCSB had surrendered the impugned land before the *Gazette* was published. Further, the Land Administrator's award of only a nominal sum of RM10 as the compensation award for the impugned land which was affirmed by the High Court was erroneous in law.

[78] In its judgment, the COA reasoned as follows:

(i) in respect of the non-compliance with s. 201(4) of the NLC on or before 10 December 2001 (the date of Form D) or 20 December 2001 (the date of *Gazette*):

> [26] This court is of the considered view that the surrender of the impugned land could only be construed as effected upon the compliance of s. 201(4)(a) to (c) of the NLC. The word "shall" connotes a mandatory obligation on the part of the Land Administrator to comply with the requirements in s. 201(4)(a) to (c) of the NLC. In this present case, there was no revision of the payable rent, no notification to the appellant of the approval and of any revised rent and no memorial of the surrender was made on the register and issue documents of title to the impugned land on or before 20 December 2001 (the date of the *Gazette*) or 10 December 2001 (the date in the Borang D).

(ii) the Court of Appeal referred to the case of *Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors* [2022] 2 CLJ 1, where the Federal Court held that the failure to comply with the relevant provisions in the NLC, particularly ss. 201(4)(a) to (c), could result to grave doubt being cast on the validity of the surrender on 11 January 1999:

> [34] In *Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors* [2022] 2 CLJ 1; [2022] 1 MLJ 701, one of the questions of law posed before the apex court, which is relevant to our case, was whether there was a valid surrender of any part of the land to the State Authority under s. 196(1)(c) read with s. 196(2)(a) of the NLC when the chargee's consent to the same had not been obtained.
>
> [35] One of the reasons the apex court allowed the appeal was that the provisions in the NLC in relation to the surrender of the land were not strictly adhered to. In our present case, failure to comply with the

relevant provisions in the NLC, particularly s. 201(4)(a) to (c), could result in grave doubt being cast on the validity of the surrender on 11 January 1999.

[36] This court also finds that there were provisions of the NLC other than s. 201(4) that were not adhered to. There was no plan showing the details of the proposed surrender land (specifically the impugned land) and the delivery of the issue document of title as required under ss. 200(1)(b) and (d) of the NLC, and read together with sub-ss. (3) and (4) of the same provision.

[37] The approach taken by the High Court for the compensation in relation to the impugned land was on the basis that the impugned land had already been surrendered. Hence, this court finds the High Court fell into error of law in accepting that the impugned land could not be assessed because it had already been surrendered.

[38] This court further finds that the fact that the impugned land was originally intended to be surrendered for the purpose of the appellant's development project would be a relevant factor to be considered in determining the land value in the assessment of the compensation amount.

[39] This court opines that whether the impugned land would have any commercial value because it was intended to be surrendered for the appellant's development project ought to be determined by the High Court Judge assisted by the assessors. This issue was not considered by the High Court Judge because the High Court Judge dismissed it on the footing that the impugned land had already been surrendered.

(iii) since there was no plan showing the details of the proposed surrender of land and delivery of the issue document of title as required under s. 200(1)(b) and (d) of the NLC read together with s. 200(3) and (4) of the same. The High Court erred in accepting that the surrendered portion could not be assessed as the approach taken by the High Court for the compensation was on the basis that the surrendered area had already been surrendered.

Question Of Law v. Question Of Fact

[79] The starting point to address is whether the complaint with regard to the formalisation of the surrender of the surrendered area raised by OCSB is a question of law or otherwise. This issue is important as it has a determinative effect on whether OCSB has the right to appeal as envisaged under s. 49 of the LAA. Section 49 of the LAA prohibits any appeal in respect of compensation. The COA opined that the finding of whether the procedure for surrender of the impugned land had or had not been complied with is a question of fact. However, the finding of when the surrender of the impugned land took effect is a question of law. Hence, it was concluded by

the COA that to determine the validity of the surrender, "… it is inevitable that the exercise has to encroach onto the former." In other words, the question raised by OCSB contains a mixture of both fact and law.

[80] The Federal Court in *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1 (*Amitabha Guha 2*) laid down guidelines to be applied in determining whether an issue raised in land acquisition matter is a question of law or not:

> In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case. What is a question of law has also been discussed and formulated in a line of cases:
>
> (i) questions of law are questions about what the correct legal test is. Questions of mixed law and fact are questions about whether the facts satisfy the legal tests: Canada *(Director of Investigation and Research v. Southam Inc* [1997] 1 SCR 748);
>
> (ii) a question of law is a question concerning the legal effect to be given to a set of undisputed facts. This includes an issue which involves the application or interpretation of a law (*Carrier Lumber Ltd v. Joe Martin & Sons Ltd* [2003] BCJ No. 1602);
>
> (iii) the question of whether a decision-maker has jurisdiction to determine a particular matter is usually considered a question of law reviewable by a court on a standard or correctness (*Premium Brands Operating GP Inc v. Turner Distribution Systems Limited* [2010] BCJ No. 349);
>
> (iv) questions of law involve errors of law committed by a decision-maker. Errors of law include the application of the wrong law, or a finding of fact in complete absence of any evidence (*Southam*, *supra* at [39]; *I-Ntelink Inc v. Broadband Communications North Inc* [2017] MBQB 146);
>
> (v) questions where there is real doubt as to the law on a particular point (*Datuk Syed Kechik Syed Mohamed & Anor v. The Board Of Trustees Of The Sabah Foundation & Ors* [1999] 1 CLJ 325 (FC);
>
> (vi) questions of law include the correctness of (a) pure statements of law (*eg*, as to the correct interpretation of a statutory provision), and (b) the inferring of a conclusion from the primary facts (where the process of inference involves assumptions as to the legal effect of consequences of the primary facts) (*Director-General of Inland Revenue v. Rakyat Berjaya Sdn Bhd* [1984] 1 CLJ 219; [1984] 1 CLJ (Rep) 108; [1984] 1 MLJ 248, 252 (FC)

[81] This court in *Pentadbir Tanah Daerah Johor v. Nusantara Daya Sdn Bhd* [2021] 7 CLJ 1 (*Nusantara*) adopted the general proposition enunciated in *Amitabha Guha 2* that a question of law is an issue involving the interpretation of the law (statutes or legal principles) and the application of

the law to the facts of each individual case. The Federal Court in *Nusantara* elucidated that it is material to decide whether any question posed to the Court of Appeal is indeed a question of law as envisaged in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 (*Semenyih Jaya*). Thus, the general proposition must be appreciated, understood and applied in the context of the proviso to s. 49(1) of the LAA. In *Nusantara,* the Federal Court clarified that:

> In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case. What is a question of law has also been discussed and formulated in a line of cases.

[82] The circumstances and meaning of what may amount to a 'question of law' under the proviso to s. 49(1) of the LAA must be 'narrowly and strictly construed'; the definition must not be extensive as it would undermine the clear intent of the proviso to s. 49(1) of the LAA that is, there is no right of appeal in respect of decisions comprising an award on compensation.

[83] The Federal Court further explained in *Nusantara* that:

> [58] Consistent with that approach, the circumstances and meaning of what may amount to a "question of law" under the proviso to s. 49(1) must also be "narrowly and strictly construed"; that the definition must not be extensive as it would undermine the clear intent of the proviso to s. 49(1) – that there is no right of appeal in respect of decisions comprising an award on compensation.
>
> [59] Next, according to s. 49(1) a narrow and strict construction to bring it in line with art. 13 of the Federal Constitution and ensure that acquisitions are in accordance with law and that compensation is adequate, in our view, this court in *Semenyih Jaya* had nevertheless expressly recognised and endorsed the approach earlier adopted in *Calamas* – that the amendment to the proviso to s. 49(1) is very clear, it is to preclude any party from appealing against the final order of compensation made by the High Court. At para. [150], this court expressed the view that "limiting the right to bring an appeal is a way of encouraging finality. If an examination of the language and policy of the Act granting the right of appeal concludes that Parliament intends to limit an appeal, the court must give effect to it". The fact that the Federal Court in *Calamas* did not discuss the constitutionality of s. 49 makes no difference to this conclusion.
>
> [60] The facts and decisions in *Calamas* and *Syed Hussain* were examined with the Federal Court in *Semenyih Jaya* concluding that these decisions do not represent a bar to appeal against any decision of the High Court on compensation; that on the facts, both decisions dealt with appeals against an order of compensation made by the High Court …

[84] The Federal Court in *Nusantara* concluded that when the complaints concerned issues of facts together with the application of valuation principles as well as the computation of compensation then such issues are not to be regarded as a question of law:

> [82] We are of the firm view that the complaints of the respondent essentially concerned issues of fact and/or application of valuation principles when computing the amount of compensation to be awarded for the acquisition. Such issues of fact as well as the application of valuation principles as we have said repeatedly, are not questions of law; certainly not within the narrow and limited remit of what or how such a question of law may be properly and validly taken on appeal under the amended s. 49(1).
>
> [83] We agree with the submissions of the appellant that the respondent's complaints relate solely and ultimately to the amount or inadequacy of compensation because of the deductions and adjustments made by the learned judge, a methodology and exercise that a High Court Judge, sitting as the land reference court is perfectly entitled to undertake to determine the market value of the scheduled land. That is precisely the exercise required of the High Court under Act 486. The market value of any land is not a matter of saying so but is subject to proof by evidence and according to the principles for determining compensation as statutorily provided in the First Schedule to Act 486. Those principles have been carefully prescribed so that adequate compensation under art. 13 of the Federal Constitution may be determined.

[85] In *Semenyih Jaya,* the Federal Court through the judgment of Her Ladyship Zainun Ali FCJ explained:

> [155] To sum up, the proviso to sub-s. 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. Instead, the bar to appeal in sub-s. 49(1) of the Act is limited to issues of fact on the ground of the quantum of compensation. Therefore, an aggrieved party has the right to appeal against the decision of the High Court on questions of law.

[86] Therefore, the question of whether the surrendered area had or had not been surrendered is a question of fact, the determination of which will ultimately result in the computation of compensation. The COA itself conceded that the finding of whether the procedure for surrender of the impugned land had or had not been complied with is indeed a question of fact.

[87] OCSB itself applied to surrender the surrendered area and the surrender was approved by the State Authority. The consistent position taken by OCSB that there was no effective surrender of the surrendered area as there was no specific written consent by OCSB to surrender the aforesaid surrendered area and, that there must be a separate document in writing with its consent is based on the facts of this appeal.

[88] OCSB's appeal at the Court of Appeal was undeniably an appeal in respect of compensation, that is the nominal sum of compensation awarded for the surrendered area. Such an appeal falls squarely within the prohibition in the proviso to s. 49 of the LAA and stands barred. However, OCSB successfully invoked the exception or reservation and persuaded the COA that the questions posed were questions of mixed law and fact and not purely on compensation. I have examined the mixed question of facts and law posed. The question or issues are all related to the sum of compensation that was made by the High Court. Why the amount awarded for the surrendered area was calculated and how that sum awarded was wrong? The learned High Court Judge, assisted by the assessors, having considered all the facts and evidence before her, concluded that the area was legally surrendered and that the sum awarded by the Land Administrator was fair and reasonable. The Federal Court in *Nusantara* reminded that "The High Court, as a land reference court, was entitled to make those deductions for the reasons stated, as those deductions are very much fact-based decisions, based on evidence adduced, the analysis of such evidence involving the court's appreciation and impression of such evidence when applying principles of valuation to the facts. Room must be given for a divergence of opinion on the evaluation of such evidence; more so when the appeal is statutorily limited."

[89] Therefore, the complaints of OCSB essentially concerned issues of fact and/or application of valuation principles when computing the amount of compensation to be awarded for the acquisition. Such issues of fact as well are not pure questions of law but issues which relate solely and ultimately to compensation, that is, the amount or inadequacy of the nominal compensation awarded. And, where a decision affects compensation, *albeit* based on a question of law, such a decision is non-appealable.

The Validity Of The Surrender Of The Land

[90] In *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Orchard Circle Sdn Bhd & Ors And Other Appeals* [2018] 1 CLJ 239 (*Orchard Circle 1*). The complaint by OCSB that was argued and addressed extensively is the infringement of s. 8(4) of the LAA, that is, the lapsed Form D. The COA held that OCSB elected and accepted that the issue before the Land Administrator was on the decision and award of compensation and damages only by participating in the second land inquiry, and that the doctrine of *res judicata* applied to the issue of validity of the acquisition proceedings. Therefore, the issue of surrender is only concerning the decision and award of compensation.

[91] The issues before the court in *Orchard Circle 1* were whether the learned judge was correct in finding that the Land Administrator's decision in respect of the second land inquiry contravened s. 8(4) of the LAA and whether the learned judge was correct in not awarding damages to OCSB. The COA concluded that:

A However, we are of the considered view that looking at the totality of the circumstances in this case, it would not be "just and equitable" to allow Orchard Circle to ventilate this issue in the second JR application.

[20] As for the doctrine of *res judicata*, the law is established. (See *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783) In
B the context of this case, the contention is premised on the fact that Form D which is dated 10 December 2001 is the crucial document in the whole scheme of things was never challenged by Orchard Circle until the second land inquiry. As alluded to earlier, Orchard Circle could have raised the lapsed Form D issue in the first JR application and also could have appealed against the orders of the learned judge in the first JR application.
C The plea of *res judicata* also of course applies not only to points on which the court was required to form a view and pronounce a judgment but to every point which belongs to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time (see *Henderson v. Henderson* (1843) 3 Hare 100, 67 ER 313).

D **[92]** It was pointed out by the COA that OCSB did not appeal against the decision of the first JR application by the High Court on its refusal to void the acquisition exercise but instead participated in the second land inquiry. Hence, according to the COA, the conduct of OCSB gave rise to a situation where the doctrine of estoppel could be and should be applied.

E **[93]** Dissatisfied with the decision of the COA in *Orchard Circle 1*, OCSB proceeded to file an appeal to the Federal Court. The Federal Court in *Orchard Circle 2* set out the main grievances of OCSB that is, it was never given the right of hearing at the first land inquiry and hence applied for the first judicial review application on 30 January 2003. Unfortunately, the first
F judicial review application was only determined by the learned High Court Judge in 2010. The High Court ordered as follows:

(a) a *certiorari* quashing the first award; and

(b) a *mandamus* remitting the matter back to the land office for a second land inquiry.

G **[94]** There was no order by the High Court to quash the original Form D and neither was there any order declaring that the land acquisition was null and void, although the reliefs for a declaration that the land acquisition was null and void was pleaded as an alternative prayer to the relief of damages and compensation. In other words, Form D remained intact and valid and
H further there was no appeal by OCSB against the order of the High Court dated 10 December 2010. As a consequence of the High Court order, the Land Administrator conducted a fresh land inquiry pursuant to s. 12 of the LAA. The order for *mandamus,* which still subsisted at that point in time, was for the Land Administrator to commence inquiry for compensation within
I 30 days.

[95] The Federal Court in *Orchard Circle 2* held as follows: A

> (i) that OCSB had benefitted from the first judicial review, the effect of which was the quashing of the first award (*certiorari*) and proceeded with a second land inquiry (*mandamus*) in which OCSB had participated. The order for *mandamus* indicated that Form D was still valid and hence OCSB was precluded and estopped from challenging the validity of B Form D in the second judicial review application. By proceeding with the second land inquiry before the Land Administrator and participating in it, OCSB elected and accepted that the issue before the Land Administrator then was on the decision and award of compensation and damages only. That was the position taken by OCSB after the first judicial review proceeding, but in Orchard Circle 2 OCSB took a different stance. Clearly, C the doctrine of estoppel applied in this case.
>
> (ii) The issues regarding the validity of the acquisition proceedings and whether OCSB was still the lawful proprietor of the said lands were previously raised in the first judicial review application and it would be an abuse of court process to allow OCSB to renew its challenge on the D propriety of the land acquisition proceedings in the second judicial review proceeding. These two issues were caught by the doctrine of *res judicata*.

[96] The Form N filed by the OCSB did not state that the main objection to the acquisition and the computation of compensation was the defective surrender. If indeed it was an important question of law which would affect E the acquisition and not solely on compensation then OCSB should have raised the complaint earlier and stated such complaints in Form N. This was never the complaint of OCSB as we can glean from the judgments in both *Orchard Circle 1* and *Orchard Circle 2*. The issue if at all ought to have been specifically stated in Form N and raised before the Land Administrator, F which OCSB failed to do so and, in the first judicial review application, in which the issues or matter had been decided in finality.

[97] Suffian LP in the case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1979] 1 MLJ 135 (*Sri Lempah*) explained: G

> When a developer surrenders part of his land for use as access roads, *etc.*, he acts under section 200 of the Code and if it satisfies the conditions set out in subsection (2) of section 201, the approving authority has no alternative but to approve the surrender.
>
> Various steps follow approval and they are all set out in section 201. The H approving authority revises the quit rent, notifies the applicant of approval and the revised quit rent makes a memorial of the surrender on the register and issues documents of title, subsection (4). Then the part of the land retained by the applicant is re-surveyed and on completion of the survey the Registrar or Collector, as the case may be, takes action under paragraph (a) of sub-section (3) of section 202. … I

[98] The approving authority has to approve the surrender of land upon satisfying the conditions under s. 201(2) of the NLC, and the steps under s. 201(4) of the NLC are merely steps which follow the approval of the surrender of land. This was duly done by the State Authority. Therefore, based on the reasons stated above, the COA erred when it decided that it was a mix of facts and law and concluded that the surrendered area had not been surrendered to the State Authority according to the NLC.

[99] Once the land is surrendered, it would revert and vest in the State Authority as State land, and such land would have the effect of being forfeited under s. 131 of the NLC, which would render it freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect. Therefore, OCSB's argument, that there was no surrender as the surrendered area *via* Form 12B was for an access road for its commercial development and not for the building of a tolled expressway, is untenable.

[100] The High Court having considered the facts and evidence before her concluded that the surrendered area had been duly surrendered to the State Authority according to provisions NLC. Her Ladyship explained:

> [30] This court is of the view that since OC had already surrendered the land in 1998, and the acquisition only took place 1 year later, OC would not have suffered any losses, as that land has been surrendered and no longer belongs to OC.
>
> [31] Therefore to compensate OC for any value more than a nominal compensation would be against the intention of the LAA.

[101] The acquisition is completed when a memorial is made in respect of all the scheduled land or any part of it to the effect that it has been acquired and has vested in the State Authority. OCSB had agreed to surrender the lands on 23 August 1998 and Lembaga Lebuhraya Malaysia (LLM) had notified OCSB of the proposed highway alignment by the appellant on 7 December 1999. The delay to formalise the surrender by endorsing on the physical title was because OCSB did not surrender the original physical title.

[102] If the proprietor, in this case, OCSB, for some reason, is unable to produce the issue document of title because it is in the hands of any person or body as chargee or lienholder, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person or body under sub-s. 244(2) or, as the case may be, sub-s. 281(4), for the production of the document at the land office within 14 days of the date thereof. Upon receipt of such an application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

[103] OSCB itself had applied to surrender the land and it was approved by the Land Administrator on 11 January 1999. However, OCSB failed to produce the issue document of title as it was in the possession of the bank as chargee of the land. Thus, the endorsement could not be made on the title due to OCSB's own inability to surrender the title to the land office as required under the law.

[104] Following the approvals to the aforesaid applications for sub-division and surrender, a development order was issued to OCSB on 3 June 1998 (first DO). It was a condition in the first DO that the approval was given based on the first layout plan. OCSB had accepted the conditions in the first DO and by accepting the conditions, no developments are permitted on all and any portion of the lands that are reserved for public utilities such as roads.

[105] Therefore, based on the reasons I have explained, I find no error by the High Court Judge in concluding even without OCSB giving the original title for endorsement to be made the surrender of the surrendered area is effective and valid. OCSB had effectively surrendered the surrendered area in accordance with the provisions of the law. Consequently, there can be no loss suffered by OCSB as that land has been surrendered and no longer belongs or is in the possession of OCSB.

Compensation

[106] In *Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd* [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356; [1990] 3 MLJ 464 (*Huat Heng*), the Land Administrator, who was the appellant, appealed against the order of compensation made by the High Court about the acquired land for the project for the widening of the Kepong-Selayang Pandang Highway, the High Court awarded compensation in the sum of $20 per sq ft. Before this, the Land Administrator issued an order for the value of compensation of $10 as nominal compensation. The acquisition was declared under s. 8 of the LAA 1960 *via* the *Gazette* of the State of Selangor dated 31 July 1986, which was also the date of valuation.

[107] The subject land in *Huat Heng* was purchased from Syarikat Selangor Development in 1980 for agricultural use. After the transfer was completed in 1983, the respondent who was the current proprietor applied to the Government of the State of Selangor for a change of condition of the subject land from agriculture to building. Subsequently, such an application was approved by the Selangor State Executive Council on 24 January 1985. The respondent was then informed of the approval on 26 April 1985 through a letter from the district land office, which notified that such approval was subject to several express conditions including the following condition to surrender the land:

A (xv111) The proprietor is requested to surrender to the Government the lands which will be used for public purposes as indicated in the site plan. [Translated from Bahasa Malaysia.]

[108] The Supreme Court allowed the appeal and restored the order of the Land Administrator, upon the following grounds:

B (i) the express condition to surrender the land had been accepted by the respondent who was the proprietor of the land, which had made all the payments required for such approval.

(ii) the relevant principle concerning compensation is well settled, that is
C the compensation awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no acquisition of the land.

(iii) it is not proper for the proprietor of the land to submit that it must be awarded compensation according to the market value.

D (iv) furthermore, the proprietor of the land must not be allowed to deny the express condition which it had accepted when receiving the approval for the change of condition of the land.

[109] The meaning of 'market value' under s. 1 of the First Schedule to the
E LAA is inapplicable to the land given the facts of that case, *ie*, the date of declaration of the acquisition (31 July 1986) is after the date of the imposition of the condition (26 April 1985) and the date when the approved plan was registered (11 December 1985).

[110] The underlying principle enunciated in the case of *Huat Heng* is that
F the compensation awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no acquisition of the land, as follows:

We are of the opinion that the judge of the High Court has failed to apply the true principle of compensation. The relevant principle concerning
G compensation is well-settled, that is the compensation awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no acquisition of the land. This principle is stated in the textbook *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath at p. 161 as follows:

H The basic principle of the law of compensation is that the sum awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no question of his land being compulsorily acquired. [Original text]

I Applying the above principle to the present case, we are of the considered view that it is not proper for the proprietor of the land to submit that it must be awarded compensation according to the market value. It is clear to us that the proprietor of the land must not be allowed to deny the express condition

that it had accepted when receiving the approval for the change of condition of the said land. It is clear that the approval permits the said land to be used for industrial buildings in accordance with the site plan as certified by the Director of Town and Country Planning, State of Selangor. The site plan prepared by the respondent itself had also been approved by the said department and the relevant Government departments and agencies and the plan had also been registered on 11 December 1985 as Plan No JPBK/B11/98/85/PD. The land acquired is reserved land in the said plan in accordance with the condition as stated above.

[111] In *Tan Yen Foon v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2008] 7 CLJ 267, Abdul Malik Ishak J applied the principles expounded in *Huat Heng* and concluded that even though there is no endorsement to show the surrender of the subject property in the land office but the plaintiff-appellant had by conduct surrendered the scheduled land to the State Authority for road reserve. Further, it was decided that when a development order is issued, there must be set back for road reserve which has to be surrendered to the State Authorities.

[112] OCSB had on its motion applied to surrender the land and the application for surrender was approved by the authorities for its development before the *Gazette* was published. Form 12B was signed and submitted by OCSB as required under the NLC. The Federal Court in *Orchard Circle 2* in its grounds of judgment said that "… In our present case, not only that the lands have been taken possession of, by the State Authority, it has already been vested in the State Authority. Once the lands are vested with the State Authority, there are no provisions in the LAA to revert the lands to the owner."

[113] Based on the layout plan submitted and the development order approved, OCSB knew that the surrendered area was reserved for public utility. The Land Administrator had conducted a site visit on 22 June 2011 to determine the actual area that was not surrendered by OCSB and OCSB had also prepared a plan showing the area that was not surrendered by OCSB. The only reason why the surrender was not endorsed on the title was due to OCSB's refusal to surrender the original issue document of title for the land office to endorse the surrender. However, the endorsement was made in 2012. Even before the endorsement, based on the facts and evidence, there was a valid surrender of the surrendered area by OCSB. The fact that OCSB had effectively surrendered the surrendered area in accordance with the provisions NLC is a relevant consideration in the determination of adequate compensation. Hence, the surrendered area cannot be assessed based on market value as the land is no longer in the possession of OCSB. Thus, nominal value can be ascribed in the determination of compensation relating to the surrendered area.

A ***Bayangan Sepadu***

[114] I find it necessary to distinguish the facts and the issues in *Bayangan Sepadu* and this present appeal. The question posed in *Bayangan Sepadu* was whether it is a mandatory requirement under ss. 196(1)(c) read with 196(2)(a) of the NLC that consent in writing in respect of the CIMB charge must first
B be obtained before the previous owners can surrender the land to the third respondent, and whether it is an undisputed fact that there was no consent in writing has been obtained by the previous owners from CIMB to surrender the land to the third respondent.

C **[115]** *Bayangan Sepadu* and the appeal before us are distinguishable. The main distinctive fact is that in *Bayangan Sepadu,* the land in dispute was not subject to an acquisition but a judicial sale. The plaintiff had, on 25 March 2011, purchased the land by a public auction. The judicial sale was on the application of the chargee bank, CIMB Bank Berhad (CIMB). The plaintiff conducted a search; however, the search did not show the existence of the
D retention pond and the structures built on the land nor did it indicate that the portion of the land had been surrendered to the defendants by the previous owners. The plaintiff successfully bid for the land in the public auction and purchased the land for RM3.66 million. After the auction, the plaintiff carried out another land search on 4 May 2011, which, according to the
E plaintiff, indicated that the portion of the land where the retention pond and the structures were built was never surrendered to the defendants.

[116] Sometime in July 2011, the plaintiff engaged a licensed land surveyor to conduct a survey of the land which revealed that the retention pond was on the land and that there were also other permanent structures on the land;
F a Tenaga Nasional Bhd (TNB) substation, staff quarters, huts and storeroom (the structures) surrounding the retention pond which form part of the land, about 9.554 acres out of 17.49 acres. The plaintiff confirmed that the certified plan of the land with the Department of Survey and Mapping Malaysia shows that the retention pond is part of the land and that the
G defendants had fenced up and erected the structures next to the retention pond.

[117] Despite the absence of some documents, the plaintiff's solicitors wrote to the first defendant on 16 March 2017 and demanded an irrevocable and unconditional undertaking, among others, the delivery of vacant possession
H of the land and removal of the fence and structures within three days. The plaintiff then proceeded to file the suit on 20 March 2017. The defendants then filed an application for striking out on 26 October 2017 but the application was subsequently withdrawn and the matter proceeded for trial.

I **[118]** It is the plaintiff's case that Lot 18903 has never been validly transferred or surrendered to the defendants to construct the retention pond and the structures as CIMB's consent as the chargee was never obtained as required under s. 204 of the NLC. The main complaint in *Bayangan Sepadu*

was the existence of the retention pond and the structures and whether the land that was auctioned included the retention pond and the structures. Whether the purchaser in the public auction is bound by a promise made by the previous owner as such a promise gives rise to an unregistered interest and whether the defendants had committed trespass by wrongly entering and proceeding to construct the retention pond on the wrong lot. The surrender was not registered on the title. The Federal Court in *Bayangan Sepadu* held that there was no evidence to show that any of the procedures as provided under ss. 196, 200 and 201 of the NLC had been adhered to. There was also no consent in writing from CIMB as the chargee with a registered interest in the land as required by s. 196(1)(c) read together with s. 196(2) of the same Act.

[119] It was held by the Federal Court in *Bayangan Sepadu* that the surrender of any private land must be made with the consent of both the registered proprietor and the State Authority and the relevant statutory provisions of the NLC must be strictly to ensure the interest of the registered proprietor are safeguarded. There was no consent of CIMB/chargee and the parties had relied on the documents and/or letters produced in particular in relation to the existence of the retention pond and the structures on the land. Thus, on the facts, it cannot be assumed that all mandatory requirements under the provisions of the NLC had been adhered to when the State Authority gave its consent for the transfer.

[120] In this appeal, OCSB as owner of the land had applied to voluntarily surrender the surrendered area to the State Authority and the said application by OCSB was approved by the State Authority. The State Authority could not proceed with the endorsement as the title was with the bank as the chargee of the surrendered area, a fact of which OCSB was well aware. The title was only given to the State Authority in 2012 and steps were taken to endorse on the title.

[121] The reliance by the Court of Appeal of the *Bayangan Sepadu* case is therefore misplaced, and as I have alluded to, the facts and the law applicable are entirely different. In the appeal before us, the title was not endorsed as the appellant had not surrendered the issue document of title upon the approval of the surrender by the Land Administrator on 11 January 1999. The title was only given in 2012, making it possible for the endorsement to be effected as required by the law.

[122] In *Orchard Circle 2*, Zabariah Mohd Yusof FCJ eloquently explained that the State Authority can only withdraw the acquisition of any land of which possession had not taken place, as follows:

[38] Section 8(5) of the LAA provides that where a declaration has lapsed, ss. 35(2), (3) and (4) of the LAA shall apply. Section 35 provides for compensation to be paid for the damage, if any, done to such land as a result of the intended acquisition, where the Authority withdraws from any intended acquisition. However, there is a rider to this provision, namely *s. 35(1) which provides that the State Authority can only withdraw the acquisition of any land of which possession has not taken place.* For clarity, we reproduce the relevant provision:

> Withdrawal from acquisition
>
> 35. (1) The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (1A) A notification in Form LA shall be published in the *Gazette* and all proceedings already taken or being taken in consequence of the declaration in subsection 8(1) in respect of the land shall cease to have effect.
>
> (2) Whenever the State Authority withdraws from any acquisition under subsection (1), the Land Administrator, after notifying the person interested in Form LB, shall:
>
> (a) determine the amount of compensation due for the damage, if any, done to such land by action taken under s. 5 and not already paid for under s. 6, and pay such amount to the person injured;
>
> (b) pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for acquisition, together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings; and
>
> (c) prepare and serve on each person interested a notice in Form LC.
>
> (3) The First Schedule shall apply, so far as may be, to the determination of the compensation payable under this section.
>
> (3A) For the purpose of this section, subsection 14(5) shall be applicable if necessary.
>
> (4) The Land Administrator or other registering authority shall make a note of any withdrawal under this section in the manner specified in subsection 9(2).
>
> (5) Notwithstanding anything contained in this section, the State Authority shall reserve the right to forfeit an amount which is sufficient to defray the amount of costs and damages incurred by any person interested and such amount shall be determined by the Land Administrator and shall be deducted from the deposit under paragraph 3(3)(d) in the event of any withdrawal made under this section.

> In the present case, the lands have already been formally taken possession of when Form K was issued on 20 February 2003 in accordance with s. 22 of the LAA. The memorial was endorsed in the register document of title after issuance of Form K as evidenced by the search made on the title dated 7 May 2014. …
>
> [39] *In our present case, not only that the lands have been taken possession of, by the State Authority, it has already been vested in the State Authority. Once the lands are vested with the State Authority, there are no provisions in the LAA to revert the lands back to the owner.* (emphasis added)

[123] Hence, in the appeal before us, the acquisition of the lands was effected after the taking of possession and vesting of the lands in the State Authority. Accordingly, the issue of the validity of the surrender of the surrendered area would not have any bearing on the calculation of the compensation.

[124] This court in *Orchard Circle 1* held that OCSB had benefited from the first JR application, which had granted an order of *certiorari* to quash the first award and a *mandamus* for the second land inquiry participated by OCSB, indicating that Form D was still valid. Therefore, OCSB was precluded and estopped from challenging the validity of Form D in the second JR application. Further, OCSB had elected to accept that the issue before the Land Administrator was on the decision and award of compensation and damages only by participating in the second land inquiry.

[125] *Orchard Circle 1* held that the doctrine of *res judicata* applied to the issues regarding the validity of the acquisition proceedings and whether Orchard Circle was still the lawful proprietor of the lands. These two issues were raised in the first JR application, and as such, it would be an abuse of court process to allow OCSB to challenge the propriety of the land acquisition proceedings in the second JR application.

[126] The applicability of the doctrine of estoppel and the doctrine of *res judicata* was an election made by OCSB in the conduct of litigation and hence OCSB was not allowed to raise the issues regarding the validity of the acquisition proceedings and whether it was still the lawful proprietor of the lands. By participating in the second land inquiry, OCSB has elected and accepted that the issue before the Land Administrator was on the decision and award of compensation and damages only.

[127] As enunciated in *Nusantara,* the appeals must not relate to a decision which comprises an award of compensation as stipulated in the proviso to s. 49(1) of the LAA. To ensure the finality of decisions on compensation, there shall be no further appeal on the matter. If the High Court's decision is a decision on compensation, there shall be no appeal to the Court of Appeal. Section 68(1)(d) of the CJA 1964 provides that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

[128] OCSB's appeal to the Court of Appeal is centred on compensation on the basis that there was no valid surrender of the surrendered area. In light of the provisions under the LAA and in particular ss. 37(2), 40D and 49(1) of the LAA and s. 68(1)(d) of the Courts of Judicature Act 1964 (CJA) and applying the principles laid down by this court in *Semenyih Jaya* and *Nusantara*, OCSB has no right of appeal as the central issue is the amount of compensation awarded by the High Court. The complaints by OCSB concerned issues of facts together with the application of valuation principles as well as the computation of compensation and hence such issues cannot be regarded as a question of law.

[129] The issue of the failure to endorse the memorial by the Land Administrator; and thus, there was no effective surrender, due to non-endorsement on the title, was only raised when OCSB was informed of the acquisition of the SILK Highway. OCSB had already agreed to surrender the surrendered area when they applied for the surrender which was subsequently approved in January 1999. Therefore, no market value can be ascribed to the said surrendered area. Furthermore, the non-endorsement of the surrender on the title has no relevance to the determination of the market value of the land, as OCSB has agreed to surrender the surrendered area.

[130] There was a serious misdirection by the Court of Appeal, remitting the matter to the High Court for an assessment of the value of the surrendered area on the basis that it had not been properly surrendered. At all material time before the High Court, OCSB was not denied the right to present its case on the basis that the surrendered area had yet to be surrendered.

[131] To permit a party, in this case, OCSB, to appeal a claim on compensation on the basis of non-endorsement on the title due to the delay by OCSB itself to surrender the title to the land office will have far-reaching consequences. It will open the floodgates, which will ultimately result in a dramatic increase of appeals on compensation. In essence, contravening and circumventing the provisions of the LAA as well as the principles enunciated by this court in *Semenyih Jaya* and *Nusantara*.

[132] Based on the aforementioned reasons and in the light of the above-settled principles, I find there are merits in the issues raised by the appellant. Having carefully considered the submissions of all parties and for all the reasons aforesaid, the appeal is allowed with costs. The decision of the Court of Appeal is set aside and the decision of the High Court is affirmed.